

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ANDREW L. COLBORN,

Plaintiff

NETFLIX, INC.,
CHROME MEDIA, LLC, f/k/a
SYNTHESIS FILMS, LLC,
LAURA RICCIARDI, and
MOIRA DEMOS,

Defendants.

Case No. 19-CV-484

**SUPPLEMENT AND CORRECTION TO
PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION FOR SANCTIONS**

Subsequent to Plaintiff's counsel's filing of Plaintiff's Reply Brief in support of his motion for sanctions today, counsel for Netflix, Inc., contacted Plaintiff's counsel to call attention to an email message that she sent on July 30, 2021, in reply to Attorney April Rockstead Barker's message of July 28, 2021, requesting that non-confidential documents be produced. After reviewing the message, Attorney Barker believes that the July 30 message likely was missed at the time that it came in because a subsequent reply in the thread collapsed the message when she viewed it on her laptop, while on a day out of the office.

This afternoon, Netflix's counsel, Attorney Leita Walker, re-forwarded her message, which stated:

Hi, April.

With regard to the discovery requests, we anticipate that a lot of the responsive materials will be subject to a confidentiality designation, but we will produce things that aren't confidential while waiting for the protective order to be entered. That said, we will need to produce documents on a rolling basis as your requests are broad and require searching email accounts and other sources over a multi-year period (from early 2013, when the producers approached Netflix, through December 2018 when Colborn sued). We are working on identifying a manageable data set that can be reviewed in proportion to the needs of this case.

Finally, we will want to have some agreement in place regarding production format, Bates numbering, etc. I'm working with Kevin to finalize a proposal and will send that along asap.

Plaintiff's counsel acknowledges that she was therefore mistaken in asserting in her Declaration filed today that there had been no response specific to her request for production of non-confidential documents.

However, to Plaintiff's counsel's understanding, the first set of responsive documents was produced on September 17, 2021, the day after the parties' meet-and-confer conference. Plaintiff's counsel understands that Netflix's counsel takes the position that there were a lot of documents, and that is why it took through the end of October to produce them. But the problem with that answer, from Plaintiff's perspective, is that a party cannot frustrate discovery for the first couple of years of a case and then expect to be writing on a clean slate. Discovery delays that might have been tolerated at the outset of a case no longer appear excusable at that stage.

In addition, it is no secret that Netflix and its counsel have significant resources. That fact makes it difficult to understand how, after it self-secured such a large cushion prior to the start of discovery, it could take Netflix four months (expedited, probably, by this motion) to complete its response to requests seeking the documents identified in Netflix's own initial disclosures. And while it is appropriate that the demand for the ESI protocol was withdrawn at the meet-and-confer, the fact that it was withdrawn when a motion appeared imminent also confirms that it was not a necessary condition to beginning the production, as had been represented.

Plaintiff's counsel wishes that the road to discovery had not been such a difficult process and that it had not again come to the point where a motion had to be filed. Plaintiff's counsel hopes that, with the benefit of action and guidance from this Court, the remaining months of discovery ahead will be different.

Dated this 29th day of October, 2021.

SCHOTT, BUBLITZ & ENGEL, S.C.

By: /s/ April Rockstead Barker
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